FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 527

CARPENTERS AND JOINERS UNION OF AMERICA, LOCAL NO. 213, ET AL.,

Petitioners.

vs.

RITTER'S CAFE, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT OF TEXAS, AT GALVESTON.

SEWALL MYER,

Attorney for Petitioners.

INDEX

Subject Index

	Page
Petition for Writ of Certiorari	1
Summary statement of the matter involved	1
Grounds of Jurisdiction	5
Questions presented	6
Reasons why this Writ should be granted	9
Prayer for Writ	10
Brief in Support of Petition	11
Statement of the Case	11
Jurisdiction of this Court	11
Specification of Errors	12
Argument	14
1. Making the constitutional right of Petitioners to have one of their members peaceably picket, to depend upon the existence of a labor dispute between Ritter, the Employer, and his employees, is a ban upon free communication, inconsistent with the guaranty of free speech under the Fourteenth Amendment of the United States Constitution	14-15
2. The constitutitonal right of Petitioners' members to carry such placard upon a public sidewalk in front of Ritter's Cafe, in the manner and under the circumstances as was done in this case, cannot be prevented by an injunction issued by a state court upon the grounds and because of the fact that the business of Ritter's Cafe would be injured thereby	15-16

Page

3. The anti-trust statutes of Texas cannot and do not exclude workingmen from peacefully exercising the constitutional right of free communication of the facts of a labor dispute in the manner as was being done in this case 16

4. A state court cannot by injunction exclude workingmen from peaceably exercising the constitutional right of free communication of the facts of a labor dispute, in the manner as was being done in this case 16

5. The dissemination of information concerning the facts of the labor dispute involved in this case, come within the area of free discussion that is guaranteed by the United States Constitution 17

6. The Court of Civil Appeals in its opinion overruling the motion for rehearing (Or. R. 48) clearly misinterprets this Court's opinion in the Swing Case and clearly adds thereto when that court says that "A labor union cannot be enjoined in the absence of criminal acts or other unlawful conduct under the statutes of a state." 17

TABLE OF CASES CITED

American Federation of Labor, et al., v. Swing, et al., 85 Law Ed. 513 8-13-15-16-17-18

Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc., 85 Law Ed. 497 8-13-14

Senn v. Tile Layers Protective Union, 57 Sup. Ct. Rep. 857 13

Thornhill v. Alabama, 84 Law Ed. 659 13-16-17-18

Statutes Cited

	Page
Constitution of the United States, First and Fourteenth Amendments	2-5-6-7-8-9-12-13-14-18-19
Judicial Code, Section 237, as amended by the Act of February 13th, 1925	11
Penal Code of Texas, Articles 1632 to 1634	6-9-13-14
Revised Civil Statutes of Texas, 1925, Articles 1746 and 1728, as amended, Acts 40th Legislature, 1927, P. 214, Chapter 144, Section 1	5
Revised Civil Statutes of Texas, 1925, Article 4642, Section 1	12

SUPREME COURT OF THE UNITED STATES

No. .....

CARPENTERS AND JOINERS UNION OF AMERICA, LOCAL NO. 213, ET AL.,

Petitioners.

vs.

RITTER'S CAFE, ET AL.

PETITION FOR CERTIORARI

To the Honorable Supreme Court of the United States:

The joint and several Petition of Carpenters and Joiners Union of America, Local No. 213, Painters Local No. 130, C. P. Driscoll, W. L. Thomas, Calus A. West and O. R. Smith and Natonal Surety Corporation of New York, New York, respectfully shows:

1. Respondents, Ritter's Cafe and E. R. Ritter sued and procured a permanent injunction against Petitioners, Carpenters and Joiners Union of America, Local No. 213, Painters Local Union No. 130, C. P. Driscoll, W. L. Thomas, Calus A. West and O. R. Smith, preventing Petitioners and the members of said Unions from picketing or causing to be picketed Ritter's Cafe and preventing a member of Petitioners' Union from peaceably carrying a placard upon a public sidewalk in the City of Houston, Texas, in front of Ritter's Cafe at 418 Broadway Street. Such placard had printed or painted the following truthful inscription:

"The owner of this Cafe has awarded a contract to erect a building to W. A. Plaster, who is unfair to the Carpenters Union 213, and Painters Union 130, affiliated with the American Federation of Labor."

2. Petitioners are labor unions holding charters under International Unions that are affiliated with the American Federation of Labor.

3. Petitioners, among other defenses, contended in their Original Answer (Or. R. 18) that a member of one or the other of Petitioners' unions was permitted and guaranteed the privilege under the rights and guarantees of the Constitution of the United States and especially the Fourteenth Amendment thereto and under the decisions of this Court construing the Federal Constitution to peaceably carry upon a public sidewalk in the City of Houston, Texas, in front of Ritter's Cafe, such placard with said truthful statement painted or printed thereon.

Petitioners further contended that a permanent injunction preventing this, amounted to an abridgement of Petitioners' right to peaceably communicate to the public the true facts involved in a labor dispute between Petitioners and Respondents.

4 The trial court held against Petitioners' contention and issued a permanent injunction which prevented Petitioners' member from so peaceably carrying said placard upon said public sidewalk.

5. The trial court made certain "Fact Findings" which all parties agreed were the true facts in the case. These "Fact Findings" are copied in the Opinion of the Court of Civil Appeals (Or. R. 35) and are briefly to the effect:

That Respondents conducted a Cafe at 418 Broadway

Street in Houston, Texas. That Ritter's Cafe employed members of an American Federation of Labor Union as cooks, waiters, etc., and had no bona fide labor dispute with his employees in the Cafe. That Ritter refused a request of the business agents of Petititoners to insert a union labor clause in a written contract Ritter was entering into with one W. A. Plaster, a contractor, to construct for him a building located about one and one-half miles from Ritter's Cafe. That shortly after Plaster began the construction of this building for Ritter, the Petitioners began picketing the cafe by having one member of the Petitioners' unions walk back and forth on the sidewalk in front of Ritter's Cafe, carrying a placard with an inscription thereon:

> "This place is unfair to Carpenters and Joiners Union of America Local 213 and Painters Local No. 130, Affiliated with American Federation of Labor."

Shortly after this suit was filed the inscription on the placard was changed to read:

> "The owner of this Cafe has awarded a contract to erect a building, to W. A. Plaster, who is unfair to Carpenters Union 213, and Painters Union 130, affiliated with the American Federation of Labor."

That Ritter employed no carpenters or painters at the Cafe and there was no building under construction at the location of the Cafe. Petitioners had no dispute with Ritter concerning the operation of the Cafe. That the representatives of Petitioners had not requested Plaster to employ their members upon this Ritter job. That Plaster had no contract with Petititoners' unions. That there existed no dispute between Plaster and his employees. That no employee of Ritter or Plaster was on a strike.

That the purpose of the picketing was to force Ritter to require Plaster to use and employ only members of Petitioners' unions in constructing the Ritter building.

That the receipts of the Cafe decreased about sixty per cent (60%) while the picketing continued. That Ritter's employees in the Cafe quit work when picketing began and did not return and Ritter's employees' union withdrew its union card from the Cafe. That truck drivers refused to deliver foodstuffs to the Cafe while the picketing continued. That other trades-union men refused to patronize or enter the Cafe while the picketing continued.

That there was no violence in connection with the picketing. The picketing was peaceable.

That the peaceable picketing would have continued unless restrained by the trial court.

6. Petitioners perfected their Appeal to the Court of Civil Appeals for the First Supreme Judicial District of Texas at Galveston and filed its appeal bond for costs (Or. R. 24) on which the Petitioner National Surety Corporation of New York, became surety (Or. R. 26).

7. The Court of Civil Appeals at Galveston, on February 6th, 1941, entered its judgment affirming the judgment of the trial court (Or. R. 34).

8. Petitioners filed in due time in the Court of Civil Appeals at Galveston their Motion for Rehearing (Or. R. 42).

9. Thereafter on the 3rd day of April, 1941, the Court of Civil Appeals at Galveston overruled Petitioners' Motion for Rehearing and filed its written opinion in support of its decision (Or. R. 47).

10. Thereafter and in due time, Petitioners filed their

Petition for Writ of Error to the Supreme Court of Texas, which is the State Court of last resort.

11. Thereafter on the 21st day of May, 1941, the Supreme Court of Texas, entered its order refusing Petitioners' Petition for Writ of Error (Or. R. 51) which under the Texas practice (Revised Statutes of Texas, 1925, Article 1746 and Article 1728, as amended Acts 40th Legislature, 1927, P. 214, Chapter 144, Section 1), indicated that the Supreme Court of Texas had refused to exercise its potential jurisdiction over the case because it was of the opinion that the judgment of the Court of Civil Appeals was a correct one. This final action so taken by the Supreme Court of Texas in this cause being less than three months before the filing of this Petition for Writ of Certiorari.

GROUNDS OF JURISDICTION OF SUPREME COURT OF THE UNITED STATES

This Court has jurisdiction of this Case for the reason that the Court of Civil Appeals for the First Supreme Judicial District of Texas, at Galveston, and the Supreme Court of Texas, by refusing a Petition for Writ of Error, as hereinbefore pointed out, has decided a federal question of substance in a way probably not in accord with the applicable decisions of this Court in the following particulars.

The judgment of the Court of Civil Appeals and the Order of the Supreme Court of Texas refusing the Petition for Writ of Error, has denied to Petitioners herein the right of free speech and freedom of the press guaranteed to them by the Constitution of the United States and especially by the Fourteenth Amendment thereto.

This Court, in several reecnt decisions, has decided that a labor union, under conditions practically identical with those that existed in this case, had the right and privilege under the guarantees and immunities of the United States Constitution, to do the acts and things which Petitioners were doing in this case and which are prohibited and forbidden to Petitioners by the judgments of the State Courts of Texas in this case.

This court also has jurisdiction of this case for the reason that it involves the proper construction of the First and Fourteenth Amendment to the Constitution of the United States.

This Court also has jurisdiction of this Case for the reason that it involves an incorrect and erroneous construction and interpretation, by the above mentioned State Courts, of certain recent decisions by this Court and which interpretations by said State Courts destroy and annul the beneficial effects to Petitioners of the recent decisions of this Court.

CHIEF QUESTIONS PRESENTED ARE:

(a) Under the guarantees of the Fourteenth Amendment to the United States Constitution, has a member of a labor union, under the conditions existing in this case, the right to peaceably carry a placard upon a public street in front of the place of business of a person with whom such labor union has a dispute or controversy, which placard has printed thereon a truthful statement of facts with reference to such labor controversy or dispute?

(b) Do the anti-trust statutes of Texas, to-wit: Articles 1632 to 1634, Penal Code of Texas, deny to Petitioners under the facts in this case, their constitutional rights of

free speech and freedom of the press guaranteed by and under the Fourteenth Amendment to the Constitution of the United States?

(c) Can a state by the enactment of a statute, whether it be an anti-trust statute or not, deny to a labor union the right to have one of its members peaceably carry a placard upon a public sidewalk in front of the place of business of a person with whom such labor union has a dispute or controversy, which placard has painted or printed thereon a truthful statement of facts with reference to such labor controversy or dispute?

(d) Can the scope of the Fourteenth Amendment to the United States Constitution be confined by the notion of a state, regarding wise limits of an injunction in an industrial dispute, whether those limits are defined by State Statutes or by judicial organs of such State?

(e) Can these State Courts deny to these workers this right of free communication, even though such workers were not in Ritter's employ?

(f) Can these State Courts deny to these workers the right to communicate the facts of this dispute, deemed by them to be relevant to their interests, because of concern of the economic interests of Ritter against whom such workers were seeking to enlist public opinion?

(g) Is the dissemination of information concerning the facts of a labor dispute regarded as within that area of free discussion that is guaranteed by the United States Constitution?

(h) Is the interpretation by the Court of Civil Appeals at Galveston of this Court's decision in the case of Amer-

ican Federation of Labor et al. v. Swing, a correct interpretation?

This interpretation by that State Court appears in the opinion of that Court overruling the Motion for Rehearing (Or. R. 48) and reads as follows:

> "As we interpret the opinion, the Court held that in the absence of criminal acts or other unlawful conduct under the statutes of a state, a union cannot be enjoined from picketing, etc."

(i) Is the interpretation by the Court of Civil Appeals at Galveston of this Court's decision in the case of Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc., a correct interpretation?

This interpretation by that State Court appears in the opinion of that Court overruling the Motion for Rehearing (Or. R. 50) and reads as follows:

> "In effect, the Court in this case held that, under the constitution, the right of free speech is not unlimited but that, under a proper state of facts, state courts are vested with authority to enjoin picketing by a labor organizatiton, in protecting the rights of its citizens where such picketing is 'enmeshed' with violence or where it involves such conduct as the state is authorized to declare unlawful or the breach of such laws as are necessary for the protection and welfare of its residents."

(j) Is the construction by the Court of Civil Appeals at Galveston of the Fourteenth Amendment to the United States Constitution a correct construction?

This contruction by that State Court appear in the opinion of that Court overruling the Motion for Rehearing (Or. R. 50) and reads as follows:

"It follows, we think, with equal force, that the Fourteenth Amendment of the Federal Constitution does not make unconstitutional the use of an injunction as a means of preventing the violation of the Texas Anti-trust laws, Articles 1632, et seq., the constitutionality of which have been recently sustained by the Supreme Court of the United States in the Case of Tigner v. State of Texas, 310 U. S. 141, in an opinion handed down by Justice Frankfurter on May 6th, 1940."

REASONS WHY THIS WRIT SHOULD BE GRANTED

(a) Each of the questions above presented involve general importance. They present to this Court for the first time the constitutional rights and guarantees of Texas workers under the Fourteenth Amendment to the United States Constitution to peaceably publicize and communicate to the public, in the manner attempted by Petitioners, the true facts of a labor dispute deemed by them to be relevant to their interests.

(b) In view of recent decisions of this Court holding legal, almost identical acts by workers in states other than Texas and holding that the privilege and right of said workers to do such acts are protected and guaranteed by the United States Constitution, similar questions will be constantly arising in Texas.

(c) The decisions of the State Courts of Texas, which are involved in this Case, deny to the workers of Texas rights and privileges which they consider the recent decisions of this Court give to them.

(d) The decision of said Court of Civil Appeals and its decision overruling the Motion for Re-hearing, announce principles of law, which are in open and direct conflict with

certain recent decisions of this Court which decisions by this Court will be referred to in Petitioner's Brief, attached hereto, in support of this petition. The order of the Supreme Court of Texas, refusing the Petition for Writ of Error, approved the two opinions of the Court of Civil Appeals as written and makes the matters therein decided and the statements therein made the rule of State Court decisions in Texas. These decisions affect the rights of several hundred thousand workers in Texas.

The Petitioner, National Surety Corporation of New York, is interested in this case only to the extent of the costs adjudged against it and is joined herein to the extent of its interest.

Petitioners file herewith a certified transcript of the Record as required by Rule 38(1) and attach hereto a brief in support of this Petition.

WHEREFORE, Petitioners jointly and severally pray that this Court in the exercise of its discretion may issue its Writ of Certiorari to review the decision herein of the Court of Civil Appeals for the First Supreme Judicial District of Texas, at Galveston, which Court has the record in this case, and for such other orders as may be appropriate.

Respectfully submitted,

SEWALL MYER,

Attorney for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. .....

CARPENTERS AND JOINERS UNION OF AMERICA, LOCAL NO. 213, ET AL.,

Petitioners.

vs.

RITTER'S CAFE, ET AL.,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Statement of the Case

Reference is here made to the statement in the foregoing Petition.

Opinions Below

The opinion of the Court of Civil Appeals, to review which this Petition for Certiorari is sought, is reported in 149 Southwestern Reporter (Second Series) 694.

Jurisdiction of This Court

This Court has jurisdiction of this Case under Section 237 of the Judicial Code as Amended by the Act of February 13th, 1925, (U. S. C. A. Volume 28, Section 344) for the reason that the State Court of Civil Appeals by its judgment has denied to Petitioners rights, privileges and

immunities claimed by them under the Constitution of the United States and especially under the Fourteenth Amendment thereto.

Specification of Errors

1. The State Court erred in its original opinion in this case (Or. R. 40) in holding that the exercise of the right of free speech and of the press, as was done by Petitioners in this case, is not guaranteed and protected to Petitioners by the Constitution of the United States and in holding in this connection that the exercise by Petitioners of such rights and guarantees is limited and prevented by the rights of Respondents Ritter's Cafe and Ritter to acquire and possess property, an instance of which being the right to carry on the Cafe Business in a lawful way without this interference by Petitioners.

2. The State Court erred in its original opinion in this case (Or. R. 39) in holding that under the authority of Article 4642, Section 1 of the Revised Statutes of Texas, 1925, a state court of equity, regardless of the Fourteenth Amendment to the United States Constitution, should grant an injunction against a labor union, enjoining and restraining permanently, peaceable picketing, where such relief is necessary for the preservation of the business of Ritter's Cafe or other property rights.

3. The State Court erred in its original opinion in this case (Or. R. 40) in holding that since there existed no labor dispute between Ritter and his employees engaged in operating Ritter's Cafe, there can be no peaceable picketing of said Cafe by Petitioners.

4. The State Court erred in its original opinion in this case (Or. R. 40) in holding that a member of Petitioners'

unions, under the facts of this case, has no legal right to carry upon a public sidewalk in front of Ritter's Cafe, in a peaceable manner, a placard which has painted or printed thereon a truthful statement of facts with reference to a labor dispute or controversy between Petitioners and Ritter, thereby communicating to the public the facts of such labor dispute deemed by Petitioners to be relevant to their interests.

5. The State Court erred in its written opinion overruling the Motion for Rehearing in this case (Or. R. 48) in holding that the decisions of this Court in the cases of American Federation of Labor v. Swing, 85 L. Ed. 513; Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc., 85 L. Ed. 497; Thornhill v. Alabama, 84 L. Ed. 659; and Senn v. Tile Layers Protective Union, 57 Sup. Ct. Rep. 857, are not applicable to and controlling of this case.

6. The State Court erred in its written opinion overruling the Motion for Rehearing in this case (Or. R. 50) in holding that the anti-trust statutes of Texas, to-wit: Articles 1632, to 1634, Penal Code of Texas, deny to Petitioners, under the facts in this case, their constitutional rights of free speech and freedom of the press guaranteed by and under the Fourteenth Amendment to the United States Constitution.

7. The State Court erred in its written opinion overruling the Motion for Rehearing (Or. R. 48) in its interpretation of this Court's opinion in the American Federation of Labor v. Swing Case, supra, as follows: "That in the absence of criminal acts or other unlawful conduct under the statutes of a state, a union cannot be enjoined from picketing—in the manner there undertaken—the place

of business of an employer with whom it is seeking to contract for its members."

8. The State Court erred in its written opinion (Or. R. 49) overruling the Motion for Rehearing in its interpretation of this Court's opinion in the Milk Wagon Driver's Union v. Meadowmoor Dairies, Inc., as follows: "That under the United States Constitution, the right of free speech is not unlimited but that under a proper state of facts, state courts are vested with authority to enjoin peaceable picketing by a labor organization, in protecting the rights of its citizens where such picketing is enmeshed with violence or where it involves such conduct as the state is authorized to declare unlawful or the breach of such laws as are necessary for the protection and welfare of its residents.

9. The State Court erred in its written opinion (Or. R. 50) overruling the Motion for Rehearing in its construction of the Fourteenth Amendment to the United States Constitution as follows: "That the Fourteenth Amendment of the Federal Constitution does not made unconstitutional the use of an injunction as a means of preventing the violation of the Texas Anti-trust laws, Articles 1632 et seq."

Argument

In support of the foregoing specifications of error we submit a brief argument directed to each of the following points.

1. MAKING THE CONSTITUTIONAL RIGHT OF PETITIONERS TO HAVE ONE OF THEIR MEMBERS PEACEABLY PICKET, TO DEPEND UPON THE EXISTENCE OF A LABOR DISPUTE BETWEEN

RITTER, THE EMPLOYER, AND HIS EMPLOYEES, IS A BAN UPON FREE COMMUNICATION, INCONSISTENT WITH THE GUARANTY OF FREE SPEECH UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

This Court's decision in American Federation of Labor, et al., v. Swing, et al., 85 Law Ed. 513, sustains this proposition.

The State Court, in its original opinion (Or. R. 41) and in its opinion overruling Motion for Rehearing (Or. R. 48) declined to follow this Court's decision and based its decision of this case very largely upon the proposition that a labor dispute between an employer and his employees is an essential requisite to the right of peaceable picketing.

In view of the action of the State Supreme Court in refusing a Petition for Writ of Error, the above erroneous declaration of the law by the Court of Civil Appeals will constitute the rule of decision in Texas unless overruled by this Court in this case.

Both State Courts had the benefit of this Court's opinion in the Swing Case when they made their erroneous decisions.

2. THE CONSTITUTIONAL RIGHT OF PETITIONERS' MEMBERS TO CARRY SUCH PLACARD UPON A PUBLIC SIDEWALK IN FRONT OF RITTER'S CAFE, IN THE MANNER AND UNDER THE CIRCUMSTANCES AS WAS DONE IN THIS CASE, CANNOT BE PREVENTED BY AN INJUNCTION ISSUED BY A STATE COURT UPON THE GROUNDS AND BECAUSE OF THE FACT THAT THE BUSINESS

OF RITTER'S CAFE WOULD BE INJURED THEREBY.

This Court's decision in Thornhill v. State of Alabama, 84 Law.Ed. 659, and in American Federation of Labor v. Swing, sustain this proposition.

Both State Courts, although they each had the benefit of this Court's opinion, in the Thornhill Case, declined to follow this Court's opinion and held exactly contrary to this Court's decision in the Thornhill Case. Unless this Court in this case reverses and overrules these decisions by the State Courts, the law in Texas will be established exactly contrary to this Court's decision in the Thornhill case.

3. THE ANTI-TRUST STATUTES OF TEXAS CANNOT AND DO NOT EXCLUDE WORKINGMEN FROM PEACEFULLY EXERCISING THE CONSTITUTIONAL RIGHT OF FREE COMMUNICATION OF THE FACTS OF A LABOR DISPUTE IN THE MANNER AS WAS BEING DONE IN THIS CASE.

The opinion of this Court in the case of American Federation of Labor, et al., v. Swing, et al., supra, expressly sustains this proposition.

The State Courts in this case have declined to be bound by this Court's opinion deciding this proposition in the Swing case.

4. A STATE COURT CANNOT BY INJUNCTION EXCLUDE WORKINGMEN FROM PEACEFULLY EXERCISING THE CONSTITUTIONAL RIGHT OF FREE COMMUNICATION OF THE FACTS OF A LABOR DISPUTE, IN THE MANNER AS WAS BEING DONE IN THIS CASE.

There is no question of violence or preserving the peace involved in this case. This being true the opinion of this Court in the Swing Case expressly sustains the above proposition.

Regardless of the clear and express language used by this Court in the Swing Case, the State Courts declined to be bound by this Court's opinion deciding this proposition.

5. THE DISSEMINATION OF INFORMATION CONCERNING THE FACTS OF THE LABOR DISPUTE INVOLVED IN THIS CASE, COME WITHIN THE AREA OF FREE DISCUSSION THAT IS GUARANTEED BY THE UNITED STATES CONSTITUTION.

The opinion of this Court in the Thornhill Case, supra, expressly sustains this proposition.

6. THE COURT OF CIVIL APPEALS, IN ITS OPINION OVERRULING THE MOTION FOR REHEARING (Or. R. 48) CLEARLY MISINTERPRETS THIS COURT'S OPINION IN THE SWING CASE AND CLEARLY ADDS THERETO WHEN THAT COURT SAYS THAT "A LABOR UNION CANNOT BE ENJOINED IN THE ABSENCE OF CRIMINAL ACTS OR OTHER UNLAWFUL CONDUCT UNDER THE STATUTES OF A STATE."

The State Court in using the words "or other unlawful conduct under the statutes of a state," clearly adds this language to the opinion in the Swing Case.

If this is the law then a state legislature can, by a state statute, make peaceable picketing under all conditions and circumstances unlawful. Also a state statute could prohibit each and every right and privilege which this Court,

in the decisions above referred to, has said are guaranteed to the citizen under the Fourteenth Amendment to the United States Constitution.

In the Swing Case, under conditions very similar to Petioners' case, this Court used this language:

> "That a state has ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by judicial organ of the state. A state cannot exclude workingmen from peacefully exercising the right of free communication, etc."

This language seems too clear to be misunderstood and yet the Court of Civil Appeals has interpreted it to mean that a state statute, even one similar to the Alabama statute in the Thornhill Case, rises above and can destroy the freedom of speech and of the press guaranteed under the Federal Constitution.

Every expression by this Court in the Swing and other cases referred to is the very antithesis of this State Court's interpretation.

Unless this Court in this case reverses and overrules the decision of the State Court in this Case, all of the benefits and rights of the workingmen in Texas under this Court's decision above referred to, will be denied to them.

Not desiring to prolong this argument longer than absolutely necessary, in conclusion we say, that the decisions of this Court which we have cited above, have positively,

unequivocally, plainly and clearly held that a laborer, who peaceably carries a placard upon a public sidewalk, in front of a place of business, as was done in this case, truthfully stating thereon the facts of a labor dispute, between the laborer's union and the owner of the place of business, is protected by the guarantees of the Fourteenth Amendment to the United States Constitution and that no state, either by statute or judicial organ, can prevent this peaceable communication of these facts and further that no state court can construe a state anti-trust statute as denying to said laborer and his union this right and privilege.

On July 23rd, 1941, the Supreme Court of Texas refused a petition for Writ of Error in the case of Borden Company v. Local Union Teamsters No. 133, thereby in effect affirming the decision in that case of the Court of Civil Appeals at Galveston.

In this Borden Case, which is not yet reported, the Galveston Court has again held that there must exist a bona fide labor dispute between the employer, being peaceably picketed, and his employees, as an essential requisite to the right to peaceably picket.

This latest decision by the Court of Civil Appeals at Galveston and which decision has now received the sanction of the Supreme Court of Texas is clearly at variance with and contrary to this Court's decision in the Swing Case. It also clearly shows a purpose on the part of these Texas Courts to refuse to be bound by the decisions of this Court in the recently decided cases hereinbefore cited.

For the reasons above stated, Petitioners earnestly urge that this Court grant its Writ of Certiorari directed to the Court of Civil Appeals for the First Supreme Judicial Dis-

trict of Texas at Galveston and relieve Petitioners from the unjust burden to which they are subjected by the terms of the judgment entered against them by the State Courts in this case.

Respectfully submitted,

SEWALL MYER,
Attorney for Petitioners.